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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 19 2002
(LIN 00 255 50206 relates)

IN RE: Applicant: [REDACTED]

Application: Application for Travel Document Pursuant to Section 223 of
the Immigration and Nationality Act, 8 U.S.C. 1203

IN BEHALF OF APPLICANT:
[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who seeks to obtain a travel document (reentry permit) under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203. The director denied the application after determining that it was filed after the applicant had departed the United States.

On appeal, counsel states that the applicant had intended on returning to the United States in June 2000, but was unable to because her husband had a stroke in China and she could not leave him.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

The regulation at 8 C.F.R. 223.2(b)(1) allows for the approval of a reentry permit if the application (Form I-131) is filed by a person who is in the United States at the time of application, and is a lawful permanent resident or conditional permanent resident.

The record of proceeding reveals that the applicant is a lawful permanent resident of the United States. Her Application for Travel Document (Form I-131) was filed on August 31, 2000. The evidence submitted indicates that she left the United States on or about December 16, 1999, and had not returned as of the date of filing the application. Since the application was filed after the applicant had departed the United States, the application may not be approved.

It is noted that a lawful permanent resident of the United States who is in possession of evidence of lawful admission (Form I-551) and seeks to reenter after an absence of one year or more, and does not possess a reentry permit, should contact a United States consulate abroad for further information regarding his/her possible options for return to the United States.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.